United Nations A/CN.4/607

General Assembly

Distr.: General
29 January 2009

Original: English

International Law Commission
Sixty-first session
Geneva, 4 May-5 June and 6 July-7 August 2009

Shared natural resources

Comments and observations received from Governments

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I. Introduction

1. At its fifty-ninth session (2007), the International Law Commission requested the Secretariat circulate to Governments a questionnaire, prepared by the Working Group on Shared Natural Resources, seeking information on State practice, in particular treaties or other arrangements existing regarding oil and gas.[1] In a circular note dated 17 October 2007, the Secretariat transmitted the questionnaire to Governments.

2. As at 31 January 2009, responses to the questionnaire had been received from the following 17 States: Algeria, Argentina, Australia, Austria, Bahamas, Bosnia and Herzegovina, Canada, Chile, the Czech Republic, Ireland, Mali, Mauritius, the Netherlands, Oman, the Republic of Korea, Tunisia and Turkey. The responses are contained in the present report and are organized, to the extent possible, on the basis of the questions contained in the questionnaire.

II. Comments and observations on the questionnaire on oil and gas received from Governments

A. General comments

Canada

3. A number of bilateral maritime delimitation agreements concluded internationally incorporate provisions regarding the possibility of finding a natural resource that straddles across a maritime boundary, as well as a procedure to be followed in the event of such a discovery. The obligations generally focus firstly on advising the other State that a transboundary field has been discovered, and secondly, on the necessity for States to seek to reach an agreement on some form of joint exploitation.

4. For the purposes of the present questionnaire, however, Canada will focus on the *only* agreement that Canada has entered into relating to the exploration and exploitation of transboundary hydrocarbons, entitled the Agreement between the Government of Canada and the Government of the French Republic relating to the Exploration and Exploitation of Transboundary Hydrocarbon Fields. The Agreement governs the apportion of the reserves found in transboundary hydrocarbon fields straddling the maritime boundary between Canada and France.

5. Canada would like to note that providing answers to the Commission should not be interpreted as either agreement or acquiescence by Canada for the Commission to provide a set of draft articles on a subject matter, such as oil and gas, that is essentially bilateral in nature, highly technical, politically sensitive, encompasses diverse regional situations and requires a case-by-case solution.

6. Canada considers that any matters relating to offshore boundary delimitation should not be considered by the Commission.

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[1] *Official Records of the General Assembly, Sixty-second Session, Supplement No. 10* (A/62/10), para. 159.

Republic of Korea

7. The Republic of Korea considers that the valuable work on this topic [Shared natural resources] by the International Law Commission represents a timely contribution to the progress development through codification in this field of law.[2]

8. An important decision is before the Commission as to whether it needs to move beyond transboundary aquifers and then to deal also with other shared natural resources. It is advisable that the Commission exercise caution in this matter. States and industries have immense economic and political stakes in the allocation and regulation of oil and gas resources, and any proposal by the Commission is likely to be highly controversial. States in the international community already have considerable experience and practices in dealing with transboundary oil and gas reservoirs. It is doubtful whether the Commission should go beyond the issue of transboundary aquifers.

9. The Republic of Korea entered "none" on comments and observations on the questionnaire on shared resources.

B. Question 1

Do you have any agreement(s), arrangement(s) or practice with your neighbouring State(s) regarding the exploration and exploitation of transboundary oil and gas resources or for any other cooperation for such oil or gas?

Such agreements or arrangements should include, as appropriate, maritime boundary delimitation agreements, as well as unitization and joint development agreements or other arrangements. Please provide a copy of the agreement(s) or arrangement(s) or describe the practice.

Algeria

10. There are no agreements regarding the exploration and exploitation of transboundary deposits. However, on 29 December 2005 a framework agreement was signed between the Algerian national company Sonatrach and the Libyan national company, the National Oil Corporation, to launch a joint study on the exploitation of the deposits at Alrar in Algeria and Wafa in the Libyan Arab Jamahiriya.

Argentina

11. Agreements in force for the Argentine Republic that relate to oil and gas within the "Shared natural resources" framework include:[3]

(a) Supplementary Agreement to the Treaty concerning the Río de la Plata and the Corresponding Maritime Boundary regarding the line marking the maritime lateral limit, the common fishing zone and the common area within which the

[2] The reply by the Republic of Korea also included comments on the Commission's draft articles on the law of transboundary aquifers, which have been omitted.

[3] The texts of the agreements, in Spanish, are available for consultation at the Codification Division of the Office of Legal Affairs.

discharge of hydrocarbons and other polluting actions are prohibited, signed: Montevideo, 15 July 1974; entry into force: 15 July 1974;

(b) Cooperation Agreement between the Argentine Republic and the Eastern Republic of Uruguay to prevent and combat incidents of contamination of the aquatic environment by hydrocarbons and other harmful substances, signed: Buenos Aires, 16 September 1987; enactment: Act No. 23,829; entry into force: 29 October 1993;

(c) Additional Specific Protocol between the Argentine Republic and the Republic of Chile on protection of the Antarctic environment, signed: Buenos Aires, 2 August 1991; entry into force: 17 November 1992;

(d) Treaty between the Argentine Republic and the Republic of Bolivia on the environment, signed: Buenos Aires, 17 March 1994; enactment: Act No. 24,774; entry into force: 1 June 1997;

(e) Agreement between the Argentine Republic and the Federative Republic of Brazil on cooperation in environmental matters (with Annex A), signed: Buenos Aires, 9 April 1996; enactment: Act 24,930; entry into force: 18 March 1998;

(f) Additional Protocol to the Treaty on the Environment between the Government of the Argentine Republic and the Government of the Republic of Bolivia, signed: Tarija, 22 July 2004; entry into force: 22 July 2004;

(g) Memorandum of Understanding between the Argentine Republic, the Republic of Bolivia and the Eastern Republic of Uruguay on energy and economic integration, signed: Brasilia, 20 August 2004; entry into force: 20 August 2004;

(h) Additional Protocol to the Agreement of Partial Scope on energy integration between Argentina and Bolivia for the supply of natural gas from the Republic of Bolivia to the north-east Argentina gas pipeline, signed: Sucre, 14 October 2004; entry into force: 27 May 2005;

(i) Framework Agreement between the Argentine Republic and the Republic of Bolivia for the sale of natural gas and the implementation of energy integration projects, signed: Buenos Aires, 29 June 2006; entry into force: 29 June 2006;

(j) Agreement for work to be started on the north-east Argentina gas pipeline and natural gas liquids plant (Republic of Bolivia), signed: Santa Cruz de la Sierra, 26 March 2007;

(k) Framework Agreement between the Argentine Republic and the Republic of Bolivia on energy integration, signed: Tarija, 10 August 2007;

(l) Financing Agreement between the Argentine Republic and the Republic of Bolivia: Pre-investment and construction studies for the natural gas liquids plant and associated distribution and marketing system, signed: Tarija, 10 August 2007; entry into force: 10 August 2007;

(m) Organization of South American Gas Producing and Exporting Countries (OPPEGASUR): Tarija agreement on gas integration between the Bolivarian Republic of Venezuela, the Argentine Republic and the Republic of Bolivia, within the framework of OPPEGASUR, signed: Tarija, 10 August 2007;

(n) Cooperation Agreement between the Eastern Republic of Uruguay and the Argentine Republic on energy-related matters, signed: Buenos Aires, 5 July 2007.

Australia

12. Australia is an island State with a lengthy coastline. It has a number of bilateral maritime delimitations with its neighbouring States. Several of these delimitation treaties include a provision that deals with the possibility of finding a natural resource that straddles across a boundary. The provisions are all similar to the following:

> "If any single accumulation of petroleum, whether in a gaseous, liquid or solid state, or if any other mineral deposit beneath the seabed, extends across the lines described in [the] Treaty, and the part of such accumulation or deposit that is situated on one side of the line is recoverable wholly or in part from the other side of the line, the two Parties will seek to reach agreement on the manner in which the accumulation or deposit shall be most effectively exploited and on the equitable sharing of the benefits arising from such exploitation."

13. The bilateral treaties between Australia and its neighbours and their relevant provisions include the following (together with links to websites where the treaties can be found online):

(a) Treaty between the Government of Australia and the Government of New Zealand establishing Certain Exclusive Economic Zone Boundaries and Continental Shelf Boundaries (art. 4), done at Adelaide on 25 July 2004 (in force 25 January 2006) (also available from http://www.austlii.edu.au/au/other/dfat/treaties/2006/4.html);

(b) Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Indonesia establishing Certain Seabed Boundaries (art. 7), done at Canberra on 18 May 1971 (in force 8 November 1973), United Nations, *Treaty Series*, vol. 974, No. 14122 (also available from http://www.austlii.edu.au/au/other/dfat/treaties/1973/31.html);

(c) Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Indonesia establishing Certain Seabed Boundaries in the Area of the Timor and Arafura Seas, supplementary to the Agreement of 18 May 1971 (art. 7), done at Jakarta on 9 October 1972 (in force 8 November 1973), United Nations, *Treaty Series*, vol. 974, No. 14123 (also available from http://www.austlii.edu.au/au/other/dfat/treaties/1973/32.html);

(d) Treaty between Australia and the Independent State of Papua New Guinea concerning Sovereignty and Maritime Boundaries in the area between the two Countries, including the area known as Torres Strait, and Related Matters (art. 6), done at Sydney on 18 November 1978 (in force 15 February 1985) ("Torres Strait Treaty"), United Nations, *Treaty Series*, vol. 1429, No. 24238 (also available from http://www.austlii.edu.au/au/other/dfat/treaties/1985/4.html);

(e) Agreement between the Government of Australia and the Government of Solomon Islands establishing Certain Sea and Seabed Boundaries (art. 2), done at Honiara on 13 September 1988 (in force 14 April 1989), United Nations, *Treaty*

Series, vol. 1536, No. 26661 (also available from http://www.austlii.edu.au/au/other/dfat/treaties/1989/12.html);

(f) Treaty between the Government of Australia and the Government of the Republic of Indonesia establishing an Exclusive Economic Zone Boundary and Certain Seabed Boundaries (art. 9), done at Perth on 14 March 1997 (not yet in force) ("Perth Treaty"), *International Legal Materials*, vol. 36, p. 1053 (also available from http://www.austlii.edu.au/au/other/dfat/treaties/notinforce/1997/4.html).

14. There are currently no known offshore oil and gas resources that exist across the boundaries established by the treaties mentioned above.

15. Australia and Timor-Leste have not established permanent maritime boundaries but have a number of interim treaties in force that provide for practical maritime arrangements between them. The Timor Sea Treaty, done at Dili on 20 May 2002 (in force 2 April 2003), establishes an area of joint petroleum development in the Timor Sea. The Treaty provides that Australia and Timor-Leste are to jointly control, manage and facilitate the exploration, development and exploitation of the petroleum resources of the joint area for the benefit of the peoples of Australia and Timor-Leste. The Treaty can be found at: http://www.austlii.edu.au/au/other/dfat/treaties/2003/13.html.

16. Australia and Timor-Leste have a unitisation agreement between them that applies to the "Greater Sunrise" field that lies in both the joint development area and an area in which Australia regulates activities in relation to the resources of the seabed and subsoil: Agreement between the Government of Australia and the Government of the Democratic Republic of Timor-Leste relating to the Unitisation of the Sunrise and Troubador Fields, done at Dili on 6 March 2003 (in force 23 February 2007). The Agreement can be found at: http://www.austlii.edu.au/au/other/dfat/treaties/2007/11.html.

17. Further information on the maritime arrangements between Australia and Timor-Leste can be found at: http://www.dfat.gov.au/geo/east_timor/fs_maritime_arrangements.html.

Austria

18. Austria has concluded only one agreement on the exploration of transboundary oil and gas resources: the Agreement between the Austrian Federal Government and the Government of Czechoslovakia on the exploitation of the common oil and gas deposits (23 January 1960), now being in force between Austria and the Czech Republic, and Austria and the Slovak Republic.[4]

19. The cooperation with the Czech Republic has already come to an end, since the oil and gas resources have already been fully exploited. The cooperation with the Slovak Republic will come to an end within the next few years, since these resources are about to be fully exploited.

[4] The text of the agreement, in German, is available for consultation at the Codification Division of the Office of Legal Affairs.

Bahamas

20. Presently the Bahamas does not have any such agreements or arrangements with neighbouring States, but it realizes the true importance of having such legally binding treaties. The Bahamas commenced work on its archipelagic baseline with the use of United Nations-approved software (CARISLOTS), which would produce the median line between the Bahamas and its neighbouring States. The Government's intention is to submit these baseline coordinates to the United Nations by April 2008.

Bosnia and Herzegovina

21. Bosnia and Herzegovina responded "No". At the moment there is no such agreement or arrangement between Bosnia and Herzegovina and the neighbouring States.

Canada

22. Pursuant to the decision of the Arbitral Tribunal in the *Case concerning the Delimitation of Maritime Areas between Canada and the French Republic of June 10, 1992*, Saint-Pierre-et-Miquelon only has jurisdiction over a narrow strip of maritime area that is 10 nautical miles in width and extends 200 nautical miles south of the islands, which is completely enclosed by Canada's exclusive economic zone.

23. As the 1992 Arbitral Tribunal definitively decided the permanent boundary between Canada and France (for Saint-Pierre-et-Miquelon) for all purposes, a need was felt for an agreement triggered by the possibility of petroleum fields straddling the Canadian-French boundary. Canada approached France in 1998 to suggest that both sides enter into a treaty to manage possible transboundary fields. Finally, in 2005, Canada and France signed an agreement to provide a management regime for hydrocarbon exploration and exploitation offshore Newfoundland, Nova Scotia and Collectivite de Saint-Pierre-et-Miquelon. The Agreement between the Government of Canada and the Government of the French Republic relating to the Exploration and Exploitation of Transboundary Hydrocarbon Fields, containing 21 articles and 6 annexes, recognizes the need for a common approach to oil and gas management to ensure the conservation and management of hydrocarbon resources that straddle the maritime boundary, to apportion between the two countries the reserves found in transboundary fields and to promote safety and the protection of the environment.

24. The Agreement acknowledges that nothing is to prejudice or restrict the sovereignty or jurisdiction of either party over their respective internal waters and territorial seas, or the exercise of sovereign rights, in accordance with international law, over their respective exclusive economic zones.

25. The Agreement was inspired by the 1976 Markham Agreement, which was used as a "framework" arrangement adapted to Canadian and French respective circumstances.

26. The Agreement has yet to enter into force, and Canada would therefore refrain from disclosing it at this time. That said, the relevant paragraphs will provide a general outline of the Agreement.

Chile

27. The only international agreement concluded by the Republic of Chile in relation to this subject area is the Treaty with the Argentine Republic on Mining Integration and Complementarity, signed on 29 December 1997 and currently in force.[5]

28. While the Treaty was not intended to address integration or complementarity in relation to hydrocarbons, its content does not exclude that possibility. In any event, it should be noted that the treatment of hydrocarbons exploitation in Chile's domestic legislation differs from the regime governing metallic and some non-metallic minerals. Whereas hydrocarbons are subject to State concessions or special operating contracts, minerals can be subject to mining concessions under the Chilean Mining Code.

29. In addition, it should be noted that the scope of application of the above-mentioned Treaty is geographically limited to the area defined by the set of coordinates listed in annex I to the Treaty and represented on the reference map contained in annex II. This area excludes any and all maritime areas and island territories, as well as the coastline as defined in each State party's domestic legislation.

Czech Republic

30. An Agreement between the Government of the Czechoslovak Republic and the Austrian Federal Government on the Exploitation of Shared Natural Gas and Oil Deposits, negotiated in 1960, specified the international legal and technical parameters for the exploitation of deposits of these raw materials. The shared deposits concerned were at Vysoká pri Morave (now in the territory of Slovakia), Zwerndorf (in the territory of Austria), and in Nový Přerov (now in the territory of the Czech Republic) and Altprerau (in the territory of Austria).

31. After its establishment in 1993, the Czech Republic succeeded to the 1960 Agreement between the Government of the Czechoslovak Republic and the Austrian Federal Government on the Exploitation of Shared Natural Gas and Oil Deposits.

Ireland

32. Ireland responded "Yes" — article 3 of the Agreement between the Government of Ireland and the Government of the United Kingdom concerning the Delimitation of Areas of the Continental Shelf between the Two Countries, signed at Dublin on 7 November 1988, and entered into force on 11 January 1990, specifically deals with cross-boundary fields.

33. This Agreement was supplemented by the Protocol supplementary to the Agreement between the Government of Ireland and the Government of the United Kingdom concerning the Delimitation of Areas of the Continental Shelf between the Two Countries of 7 November 1988, done at Dublin on 8 December 1992.[6] The Agreement referred to above, as supplemented, is a Maritime Boundary

[5] The text of the treaty, in Spanish, is available for consultation at the Codification Division of the Office of Legal Affairs.

[6] The texts of the agreement and the protocol thereto, in English, are available for consultation at the Codification Division of the Office of Legal Affairs.

Delimitation Agreement. No unitization or joint development agreements have been necessary to date. Drilling in the Irish sector is not permitted within 125m of any boundary line.

34. An oil and gas discovery (named Dragon) in the St. George's Channel area was for a time a candidate for development and part of the structural closure was mapped as crossing the agreed continental shelf boundary between Ireland and the United Kingdom. Preliminary discussions were held with counterparts in the United Kingdom prior to appraisal drilling but since the appraisal drilling was not successful no further discussions took place and Ireland understands there are currently no plans for further drilling or development.

Mali

35. With the exception of the Framework Agreement on Cooperation signed with Mauritania, which covers, among other things, exploration, production, transport, storage and refining activities in the sedimentary basins shared by the two countries (Nara and Taoudéni), no other such agreement or arrangement has been signed or concluded between Mali and its other neighbours. A framework agreement covering only training and exchanges of information and experience has been signed with Senegal.

Mauritius

36. Mauritius responded "No".

Netherlands

37. The Netherlands has concluded the following bilateral agreements relating to shared natural resources:[7]

(a) Supplementary Agreement between the Kingdom of the Netherlands and Federal Republic of Germany of 14 May 1962 to the Treaty of 8 April 1960 concerning arrangements for cooperation in the Ems Estuary (Ems-Dollard Treaty) (United Nations, *Treaty Series*, vol. 509, No. 7404);

(b) Agreement between the Government of the Kingdom of the Netherlands and the Government of the United Kingdom of Great Britain and Northern Ireland of 6 October 1965 relating to the Exploitation of Single Geological Structures extending across the Dividing Line on the Continental Shelf under the North Sea (United Nations, *Treaty Series*, vol. 595, No. 8615);

(c) Agreement between the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland of 26 May 1992 relating to the Exploitation of the Markham Field Reservoirs and the Offtake of Petroleum therefrom (United Nations, *Treaty Series*, vol. 1731, No. 30235);

(d) Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the Kingdom of the Netherlands of 25 July 2007 concerning the Minke Main Development (not published).

[7] The texts of the published agreements, in English, are available for consultation at the Codification Division of the Office of Legal Affairs.

Oman

38. Oman responded "Yes". There are arrangements regarding oil, gas and minerals between the Government of the Sultanate of Oman, represented by the Ministry of Oil and Gas, and some neighbouring States, such as the United Arab Emirates, Yemen and the Islamic Republic of Iran. However, no agreements have yet been signed regarding the joint utilization or development of any shared fields.

39. There are maritime boundary delimitation agreements, but such agreements are within the purview of the Ministry of the Interior.

Turkey

40. Turkey does not have any agreement, arrangement or practice with its neighbouring States regarding the exploration and exploitation of transboundary oil/gas resources.

C. Question 2

Are there any joint bodies, mechanisms or partnerships (public or private) involving exploration, exploitation or management of the transboundary oil or gas? Please provide information describing the nature and functioning of such arrangements, including governing principles.

Australia

41. The Timor Sea Treaty establishes a joint management and regulation regime for the joint development area in the Timor Sea. The Timor Sea Designated Authority is the day-to-day regulator of the joint area and is based in Dili. Its website can be found at: http://timorseada.org/.

42. The Designated Authority is responsible to a Joint Commission, currently constituted by two Timor-Leste officials and one Australian official, which oversees the work of the Designated Authority and establishes policies and regulations relating to petroleum activities in the joint area. The ultimate decision-making body established by the Timor Sea Treaty is a Ministerial Council, constituted by an equal number of ministers from Australia and Timor-Leste. The Designated Authority, Joint Commission and Ministerial Council operate in accordance with the terms of the Timor Sea Treaty.

Austria

43. The above-mentioned agreement (see para. 18 above) provides for a "mixed committee" which is composed of a representative of the Austrian Federal Ministry of Economics and Labour and a representative of the OMV oil and gas corporation on the Austrian side, and a representative of the Slovak Ministry of Economics and a representative of the NAFTA company on the Slovak side. This committee decides, among others, on the share of the oil and gas — which is exploited exclusively on Austrian territory — to be given to the Slovak side.

Bahamas

44. There are no such joint programmes, mechanisms or partnerships concerning exploration or management of transboundary oil or gas in the Bahamas.

Bosnia and Herzegovina

45. Bosnia and Herzegovina does not have any local or transboundary sources of gas or oil, or contract related to that issue. There were certain researches regarding sources of crude oil in Bosnia and Herzegovina by 1990, but they have never been exploited.

Canada

46. The Agreement between the Government of Canada and the Government of the French Republic relating to the Exploration and Exploitation of Transboundary Hydrocarbon Fields envisages the creation of a joint Technical Working Group to examine technical issues that arise from the implementation of the Agreement or from any Exploitation Agreement (explained further below), including information related to the regional geological setting and geological basins as well as any question related to the implementation of the Development Plan or Benefits Plan (explained further below). The Working Group must allow the Parties to review information related to the regional geological setting and, at the request of one Party, meet to facilitate approval of a Development Plan or Benefits Plan by reviewing concerns or issues regarding such a plan or a preliminary version of it. The Unit Operator is normally to be invited to all or part of any such meetings.

47. The Working Group consists of individuals nominated by each Party (two Chairs and two Secretaries), as well as other persons which either Party considers should be present at any Working Group meeting.

Czech Republic

48. In conformity with the 1960 Agreement between the Government of the Czechoslovak Republic and the Austrian Federal Government on the Exploitation of Shared Natural Gas and Oil Deposits, there existed a Czechoslovak-Austrian Mixed Commission defined in article 2 of the said Agreement. The Mixed Commission was composed of representatives of the two contracting parties. The task of the Mixed Commission was to calculate the total reserves in individual deposits and to specify the share of each contracting party, to specify the conditions for exploitation, in particular to establish long-term exploitation programmes, as well as the ways of removing potential difficulties that might arise within the implementation of the Agreement.

49. The Czechoslovak side was represented in the Mixed Commission by representatives of the competent ministry and by the Nafta Hodonín mining company. After the disintegration of Czechoslovakia, a Czech-Austrian Mixed Commission was set up to continue to fulfil the tasks arising from the 1960 Agreement between the Government of the Czechoslovak Republic and the Austrian Federal Government on the Exploitation of Shared Natural Gas and Oil Deposits. Participating in the work of the Mixed Commission on the Czech side are representatives of the Ministry of Industry and Trade and of the Moravské naftové doly mining company.

Hungary

50. The Hungarian Oil and Gas Company (MOL) has concluded two partnership agreements with the Croatian National Oil and Gas Company (INA) to jointly explore cross-border Croatian-Hungarian plays. One of the agreements covers the Podravska Slatina-Zalata area (signed in 2006), the other agreement concerns the Novi Gradac-Potony area (signed in 2007). Both companies have 50-50 share in the exploration projects. The partnership is governed by the Management Committee, which consists of the representatives of MOL and INA, and all decisions are made on a consensual basis. The Steering Committee decides on the annual work programme and the necessary budget. INA is the operator on the Croatian side, and MOL undertakes the responsibilities and tasks of the operator on the Hungarian side. The agreements are governed by the English law.

Ireland

51. Not at the moment. However, Ireland is in regular contact with its counterparts in the United Kingdom (Department for Business, Enterprise and Regulatory Reform (BERR, formerly Department of Trade and Industry)) regarding issues of mutual interest. Ireland responded "Not applicable" to the question "Please provide information describing the nature and functioning of such arrangements, including governing principles".

Mali

52. A steering committee comprising representatives of Mali and Mauritania has been established to implement the Framework Agreement on oil-related activities in the shared sedimentary basins.

53. The steering committee meets at least twice annually or as necessary to consider project and budget proposals for activities within a mutually agreed area.

Mauritius

54. Mauritius responded "No".

Netherlands

55. The Netherlands responded "No".

Oman

56. The Ministry of Oil and Gas is not involved with any joint bodies, mechanisms or partnerships (public or private) engaged in the exploration, exploitation or management of transboundary oil or gas.

57. However, there are understandings on bilateral exchange of technical information. Such understandings are implemented as needed by companies on both sides under the supervision of the Ministry.

Turkey

58. Turkey does not have joint bodies, mechanisms or partnerships involving exploration, exploitation or management of the transboundary oil or gas.

D. Question 3

If the answer to question 1 is yes, please answer the following questions on the content of the agreements or arrangements and regarding the practice:

(a) Are there any specific principles, arrangements or understandings regarding allocation or appropriation of oil and gas, or other forms of cooperation? Please provide a description of the principles, provisions, arrangements or understandings;

(b) Are there any arrangements or understandings or is there any practice regarding prevention and control of pollution or regarding other environmental concerns, including mitigation of accidents? Please provide further description.

Algeria

59. There is an agreement of friendship and cooperation between the Algerian and Libyan Arab Jamahiriya Governments regarding the development and exploitation of the deposits at Alrar and Wafa.

60. The firm Oil Spill Response Company (OSPREC) was created in January 2007. Its shareholders include Algeria and Morocco, soon to be joined by Tunisia. The firm's objective is to prevent and combat hydrocarbon pollution in an area extending from the southern Mediterranean coast to the west coast of Africa.

Australia

61. In relation to question 3 (a), the provisions quoted above (see para. 12 above) in several of Australia's delimitation agreements make it clear that for any transboundary petroleum resource found, the two parties are to seek to reach agreement on the manner in which the resource is to be most effectively exploited and on the equitable sharing of the benefits arising from such exploitation.

62. In relation to question 3 (b):

(a) In those areas where Australia exercises seabed jurisdiction and Indonesia exercises water column jurisdiction, the parties will be required by article 7 of the Perth Treaty, when it enters into force, to take effective measures as may be necessary to prevent, reduce and control pollution of the marine environment;

(b) Article 13 of the Torres Strait Treaty between Australia and Papua New Guinea provides obligations on the parties to protect and preserve the marine environment in and in the vicinity of the Protected Zone. Under article 15, Australia and Papua New Guinea have agreed to extend a moratorium on mining and drilling of the seabed and subsoil for the exploration or exploitation of the resources within the Protected Zone for an indefinite period;

(c) Article 10 of the Timor Sea Treaty places obligations on Australia and Timor-Leste to cooperate to protect the marine environment of the joint petroleum development area, so as to prevent and minimize pollution and other environmental harm from petroleum activities. In the Greater Sunrise unit area, article 21 of the unitization agreement between Australia and Timor-Leste provides that certain specified Australian environmental protection legislation will apply and will be administered by the regulatory authorities designated by the unitization agreement;

(d) The Australian Maritime Safety Authority, responsible for maritime safety, marine environment protection, and maritime and aviation search and rescue in Australia, has several memorandums of understanding with Australia's neighbours (New Caledonia, New Zealand, Papua New Guinea and Indonesia) which relate to responses to major oil spills.

Austria

63. Since the gas is exploited exclusively on Austrian territory, Austrian laws and regulations apply.

64. There are no specific arrangements.

Bahamas

65. The Bahamas indicated that the question was "Not applicable".

Canada

66. The Agreement between the Government of Canada and the Government of the French Republic relating to the Exploration and Exploitation of Transboundary Hydrocarbon Fields is a framework arrangement which does not contemplate a single unified regime but instead is a means to facilitate the requirements of French and Canadian legislation to be fulfilled for any transboundary field.

67. In addition to reiterating the definitive boundary between Canada and France for all purposes, the Agreement's preamble recognizes proportionality based on respective share of reserves in a transboundary field as the basis of the Agreement and highlights the importance of good oil field practice, safety, protection of the environment and the conservation of resources in transboundary fields.

68. The following are the main features of the Agreement regarding allocation or appropriation of oil and gas, or other forms of cooperation:

(a) The Agreement envisages provision of information with a more comprehensive exchange once accumulation has been determined to be transboundary. The Agreement imposes a requirement for information exchange upon the drilling of any well within 10 nautical miles of the maritime boundary. Information exchanged cannot be further disclosed without the consent of the party that provided it;

(b) The Agreement speaks about the notice to be given to the other party, with evidence, if data shows that accumulation is (or is not) transboundary. If the other party is not convinced, that party can: (a) request a meeting of the Technical Working Group; and/or (b) send the disagreement to a single expert for determination in accordance with procedure and timelines for using the expert outlined in the Agreement;

(c) The Agreement provides for determination and redetermination of hydrocarbon reserves in a transboundary field. Indeed, the Unit Operator is to submit specific proposals on which both parties shall agree upon in a specific time frame. Should such an agreement not be reached, the disagreement is submitted to a single expert for determination, in accordance with procedure and timelines for using the expert outlined in the Agreement;

(d) Once agreement is reached or the expert determines that the accumulation is transboundary, the parties must delineate an area for the exchange of comprehensive data. If a Holder of Mineral Titles, meaning a person or firm to whom one of the parties has granted a subsisting mineral title or exclusive right to explore or exploit hydrocarbons in a particular area, is interested in production from the transboundary field, the parties will start negotiation of an Exploitation Agreement. The Exploitation Agreement is defined as any agreement entered into between Canada and the French Republic in respect of a transboundary field;

(e) The Agreement envisages a separate Exploitation Agreement for each transboundary field. It imposes a time limit for the parties to enter into Exploitation Agreement since any commercial production in a transboundary field cannot commence until an Exploitation Agreement has been concluded. If the parties are unable to conclude an Exploitation Agreement within a particular time frame, either party may refer the finalization of the Exploitation Agreement to arbitration, in accordance with the arbitration procedure outlined in the Agreement. This provides certainty as to time frames in which the Exploitation Agreement will be finalized;

(f) The Agreement requires that Mineral Title Holders conclude a Unitization Agreement that provides for: (i) combining respective rights in the transboundary field's hydrocarbon resources; (ii) sharing costs and benefits; (iii) operating the field as a single unit. The Unitization Agreement is subject to the prior written approval of both parties. This is an operator-led confidential arrangement which incorporates provisions to ensure that, in the event of a conflict between the Unitization Agreement and the Exploitation Agreement, the terms of the Exploitation Agreement shall prevail;

(g) Exploitation of any transboundary field is to be undertaken in accordance with the Exploitation Agreement and the Unitization Agreement;

(h) A Development Plan and a Benefits Plan must be agreed upon for a particular transboundary field before production can commence. A Development Plan sets out in detail the approach to the development and operation of the transboundary field while a Benefits Plan ensures that, in developing the transboundary field, and subject to all applicable domestic and international legal obligations of the parties, best efforts are made to ensure economic benefits are shared between Canada and France, taking into account the apportionment of hydrocarbon reserves as between the parties. Upon submission from the Unit Operator, parties have a specific time frame in which to approve a Development Plan and a Benefits Plan. Should the time period expire, either party can refer the matter to arbitration, in accordance with the arbitration procedure outlined in the Agreement;

(i) The parties must ensure that exploitation of transboundary field is in accordance with approved Development and Benefits Plans;

(j) The Agreement provides that all disputes are to be resolved through negotiation except for disputes which are specifically to be submitted to an expert or to arbitration.

69. The Agreement contains provisions that address environmental considerations, including transboundary environmental impact assessments. The Agreement provides for parties to conclude arrangements or agreements dealing with search and rescue, marine pollution and transboundary impact environmental assessments. For

instance, the parties are required to enter into a side arrangement on implementation of the Convention on Environmental Impact Assessment in a Transboundary Context, Espoo, Finland 1991, available from: http://www.unece.org/env/eia/documents/legaltexts/conventiontextenglish.pdf.

70. The parties have a duty to take all necessary measures to minimize adverse impact on the environment. The Agreement imposes a requirement for Mineral Title Holders to provide security, as determined by the party having jurisdiction over them, to meet environmental damage caused by any hydrocarbon exploration or exploitation activity.

71. On a separate note, environmental considerations are part of the approval process for oil and gas activities under Canada's domestic legislation, and this would be true in the case of transboundary fields as well.

Czech Republic

72. A specific feature of the 1960 Agreement between the Government of the Czechoslovak Republic and the Austrian Federal Government on the Exploitation of Shared Natural Gas and Oil Deposits was that the raw material was used only by one contracting party (Austria) with regard to the technically rational system of mining. The other contracting party (Czechoslovakia/Czech Republic) had at its disposal an observation well to monitor the observation of technical parameters. As the raw material comes also from the Czechoslovak/Czech territory, Czechoslovakia/the Czech Republic was entitled to certain financial compensation. The recipient of the compensation was the mining company that had the mining licence for the area, namely, the Nafta Hodonín company (now the Moravské naftové doly mining company).

73. The 1960 Agreement provides for the duty of notification in the event of any special circumstances requiring immediate measures (art. 4). The mining companies of the contracting parties cooperate in the exploitation and are expected to exchange information also on the environmental impacts of the exploitation.

Ireland

74. Ireland responded "Yes" — article 3 of the Agreement between the Government of Ireland and the Government of the United Kingdom concerning the Delimitation of Areas of the Continental Shelf between the Two Countries, as supplemented, reads as follows:

> "If any oil, gas or condensate field extends across Line A or Line B and the part of such field which is situated on one side of the line is exploitable, wholly or in part, from the other side of the line, the two Governments shall make determined efforts to reach agreement as to the exploitation of such field."

75. Ireland indicated that question 3 (a) was "Not applicable".

76. As regards, question 3 (b) an Oil Spill Contingency Plan is put in place before any drilling takes place. strategic environmental assessments also include a section on transboundary impact assessment.

Mali

77. Mali responded "No" — the Framework Agreement with Mauritania does not include any specific principles or arrangements regarding allocation or appropriation of oil and gas, nor does the Framework Agreement include any such understandings or arrangement.

Mauritius

78. Mauritius indicated that the question was "Not applicable".

Netherlands

79. In relation to question 3 (a):

(a) Articles 5 to 9 of the 1962 Supplementary Agreement to the Ems-Dollard Treaty;

(b) Articles 5 and 6 of the 1992 Markham Agreement;

(c) Paragraph (f) of the Minke Main Memorandum of Understanding.

80. As regard, question 3 (b):

(a) Article 17 of the 1992 Markham Agreement;

(b) Paragraph (d) of the Minke Main Memorandum of Understanding.

Oman

81. In relation to question 3 (a), there are arrangements to foster cooperation in the oil and gas sectors between the Sultanate and some neighbouring States. For example, there is a joint Omani-Yemeni technical committee on oil and gas. That committee has held four meetings since its creation in 1993. The most important things that were agreed on during that period are:

(a) Exchange of information and maps on common border zones in relation to oil and gas;

(b) Bilateral exchange of technical information on areas adjoining the borders and the provision of facilities to Omani and Yemeni companies wishing to invest in the oil and gas sectors; such investment must take place in accordance with the procedures followed in both countries;

(c) Training of Yemeni technicians in various areas by Petroleum Development Oman (PDO) and Occidental Petroleum Corporation in the year 2000;

(d) Exchange of visits between officials and technical personnel from both countries as well as visits to oil facilities and companies operating in the country.

82. The committee met most recently in Sana'a from 1 to 4 July 2007. Many important matters were discussed at the meeting, such as the formation of a joint working group of the Petroleum Exploration and Production Authority (PEPA) of Yemen and the Oman Oil Company (OOC) to study the possibility of investing in available areas in Yemen. Also discussed was Omani use of Yemeni expertise in the development of a centralized database, which the Ministry intends to create in the near future. A delegation from the Ministry recently visited Yemen to discuss the matter.

83. In relation to question 3 (b), in respect of environmental affairs, the Ministry of the Environment and Climate Affairs is the competent body.

E. Question 4

Please provide any further comments or information, including legislation, judicial decisions, which you consider to be relevant or useful to the Commission in the consideration of issues regarding oil and gas.

Australia

84. Australia responded "No response".

Bahamas

85. Bahamas indicated that the question was "Not applicable".

Bosnia and Herzegovina

86. Bosnia and Herzegovina cited the following:

(a) Decision of the Council of Ministers of Bosnia and Herzegovina on the quality of oil products (2002);

(b) Decree on the organization and regulation of the gas sector in the Federation of Bosnia and Herzegovina (2007); and the Gas Law relating to the Republic of Srpska (2007). Activities are ongoing on drafting of the national gas law and improving of the existing legislation on the entity level.

Canada

87. The Canadian area covered by the Agreement between the Government of Canada and the Government of the French Republic relating to the Exploration and Exploitation of Transboundary Hydrocarbon Fields is governed domestically by the Canada-Newfoundland Offshore Petroleum Board, an independent body that regulates the offshore area on behalf of Canada and the Province of Newfoundland and Labrador. The pertinent legislation is the Canada-Newfoundland Atlantic Accord Implementation Act, available at: http://laws.justice.gc.ca/en/C-7.5/index.html.

88. In addition, there is a small transboundary area that could be subject to the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act, available at: http://www.cnsopb.ns.ca/generalinfo/pdf/ProvAct.pdf.

89. Both pieces of legislation provide for the management of offshore oil and gas resources on behalf of the federal and provincial governments.

Czech Republic

90. The Czech Republic has oil and natural gas deposits only in a small part of its territory, practically only in the southern and northern border areas in the east of the Czech Republic. Therefore, what is taken into consideration are the transboundary oil and natural gas deposits shared only with Austria and possibly perhaps carboniferous gas deposits shared with Poland. With regard to the really thorough

(unique in the world) geological exploration of the territory of the Czech Republic, no new oil or natural gas deposits are likely to be found and requiring a new international agreement that would regulate their shared exploitation and/or use.

Hungary

91. There are only few precedents of cross-border development of petroleum resources, therefore Hungary is not aware of relevant treaties or judicial decisions. However, the adaptation of the unitization principles elaborated by the international oil and gas industry is worth considering.

Ireland

92. Ireland indicated that the question was "Not applicable"

Mali

93. In preparation for the possible discovery of hydrocarbon reserves, the question of its transport in border areas is currently being studied. The Government is seeking to define an appropriate legal framework for this activity.

Mauritius

94. Mauritius responded "None".[8]

Netherlands

95. The 1962 Supplementary Agreement to the 1960 Ems-Dollard Treaty on the allocation of oil and gas is an exceptional agreement in that it provides for the division of oil and gas reserves in an area where no inter-state boundary exists. In the 1960 Ems-Dollard Treaty, the Netherlands and Germany "agreed to disagree" with regard to a boundary in the Ems-Dollard area, which had been under dispute for several hundred years. Taking into account this exceptional situation, it was agreed in 1962 to equally divide the oil and gas reserves between the two countries in an area defined as the "border area". The agreements that have been concluded with respect to the Ems-Dollard estuary are regarded by many as exemplary of how to deal with a situation where no agreement concerning a boundary can be reached between two countries.

96. The 1992 Markham Agreement was a specific agreement for a specific situation, which resulted in an elaborate and detailed agreement.

Oman

97. Oman responded that no information relevant to question 4 was currently available

Turkey

98. According to international law, the delineation of the continental shelf, as well as the exclusive economic zone in semi-enclosed seas such as the Eastern

[8] However, the Government of Mauritius annexed to its response the Petroleum Act, Act No. 6 of 16 April 1970, the text of which, in English, is available for consultation at the Codification Division of the Office of Legal Affairs.

Mediterranean could only be possible through arrangements to be made among all the countries concerned and by observing the rights and interests of all the parties.

99. In this respect, Turkey's views regarding the Greek Cypriot attempts that are contrary to international law and legitimacy, to delimit maritime jurisdiction areas and to issue licenses for exploring oil and gas in the Eastern Mediterranean Sea have been duly conveyed to the United Nations and other relevant international organizations, as well as to the international community, on every occasion.

100. In this context, following the signing of a delimitation agreement between Egypt and the Greek Cypriot side on 17 February 2003, it has been registered with the letter of the Permanent Mission of Turkey dated 2 March 2004, which was also circulated as a United Nations document (published in the *Law of the Sea Bulletin*, No. 54), that the attempts of the Greek Cypriot side to delimit maritime jurisdiction areas are unacceptable, and that Turkey also has legitimate rights and jurisdiction in areas to the west of the Island of Cyprus beyond the longitude 32° 16' 18" East. In this vein, it has been stated that the Greek Cypriot endeavours to create de facto situations through unilateral acts in the Eastern Mediterranean would not be accepted.

F. Question 5

Are there any aspects in this area that may benefit from further elaboration in the context of the Commission's work? Please indicate those aspects.

Australia

101. Australia feels that the Commission should approach with caution any examination of areas of international law that directly engage matters that are essentially bilateral in nature. Australia acknowledges the valuable work undertaken by the Commission and especially the Special Rapporteur, Mr. Chusei Yamada, on the general topic of shared natural resources and, in particular, shared underground aquifers.

102. With respect to the Commission's proposed consideration of shared oil and gas, this is one of essential bilateral interest — that is, one to be resolved by negotiation between the particular States involved. The topic is already adequately covered by international law principles and dealt with by States on a bilateral basis.

103. If the Commission proceeds with its consideration of shared oil and gas resources, Australia considers that it should not examine matters relating to offshore boundary delimitation. Whether such resources are in fact physically shared is first and foremost a question of delimitation of territory or maritime jurisdictions. Individual circumstances will impact on each situation and States will want to resolve any differences on a case-by-case approach. These differing circumstances will throw up a degree of complexity that would be difficult to succinctly distil. Maritime delimitation, and assessment of offshore resources, are matters for the States concerned and this is made clear by the 1982 United Nations Convention on the Law of the Sea. In addition, in Australia's experience delimitation agreements generally contain unitization clauses that deal with petroleum resources that straddle the agreed boundary.

Bahamas

104. There is the issue of horizontal drilling regarding transboundary oil and gas resources that requires further dilation.

Bosnia and Herzegovina

105. Bosnia and Herzegovina responded "Not defined".

Canada

106. While there is a growing demand for rules governing the use of shared or transboundary natural resources, Canada believes that the oil and gas issue is essentially bilateral in nature, highly technical and politically sensitive and encompasses diverse regional situations. As such, it should be left for resolution by negotiation between States involved. As a result, Canada is not persuaded by the need for the Commission to develop any framework or model agreement(s) or arrangement(s) or draft articles on oil and gas.

107. However, Canada does see the benefit of the Commission outlining elements that could guide States when negotiating agreements on partition of oil and gas. A "template of elements" on the practice applicable, including a review of the existing agreements and State practice, along with an identification of common principles and features, best practices and lessons learned, would be very useful, not only to Canada, but also internationally. Such a template could separate (a) circumstances where there is no delimitation agreement in place; and (b) circumstances where a delimitation agreement is already in place.

108. Should the Commission proceed with the consideration of the topic of shared oil and gas resources, Canada would not endorse the Commission examining matters relating to offshore boundary delimitation.

Ireland

109. Ireland responded "No", and in relation to indicating those aspects, Ireland responded, "Not applicable".

Mali

110. Certain aspects of the transport of Malian oil and gas to terminals in neighbouring countries need more detailed study, namely: integration and harmonization of the regulations of the different countries; and understandings and/or arrangements with neighbouring countries with which Mali shares sedimentary basins.

Mauritius

111. Mauritius responded "No".

Oman

112. Oman responded that no information relevant to question 5 was currently available.